

REMARKS

Claim Amendments

Claims 12 and 14-19 are pending in the instant application. Claims 15-19 have been withdrawn from consideration. Claim 12 has been amended to remove 2'-O-methyl from the list of immunostimulatory moieties. Claim 14 has been amended to be in independent form, to remove 2'-O-methyl from the substituents recited for X4, and to specify that at least one of X1, X2, X3, X4, U1, U2, U3, D1, D2, or D3 is from the list of immunostimulatory moieties recited specifically for each of said positions.

Rejoinder

Applicants respectfully request that Claims 15-19, previously withdrawn as being directed to non-elected species, be rejoined herein. Claims 15-19 depend from and, thus, require all the limitations of Claim 12.

Rejection of Claims 12 and 14 Under 35 U.S.C. §102(e): Agrawal

Claims 12 and 14 are rejected as being anticipated by Agrawal (PGPUB 20060142556). Applicants respectfully disagree. Agrawal does not teach an immunostimulatory oligonucleotide having C in a CG dinucleotide substituted by a non-natural pyrimidine. Accordingly, Agrawal cannot anticipate claims 12 and 14, which specifically recite this limitation. Therefore, Applicants respectfully request that this rejection be withdrawn.

Rejection of Claims 12 and 14 Under 35 U.S.C. §102(e): Schwartz

Claims 12 and 14 are rejected as being anticipated by Schwartz (PGPUB 20040092468).

Claim 12 has been amended to remove 2'-O-methyl from the list of immunostimulatory moieties. Applicants respectfully submit that this amendment overcomes the rejection. With respect to amended claim 14, the only remaining position that recites 2'-O-methyl is now U1. The present rejection maintains that Schwartz teaches an immunostimulatory oligonucleotide containing both a modified C and one of the recited immunostimulatory moieties, namely a 2'-O-methylnucleoside, reciting paragraph 56 of Schwartz. While Schwartz does speculate about the types of sugars that can be included in its "ISS", no embodiment or other teaching in

Schwartz suggests that a 2'-O-methyl moiety is at a position corresponding to U1. Anticipation must be clear. Thus, Schwartz does not anticipate amended claim 14.

Obviousness-type double patenting

Claims 12 and 14 are provisionally rejected for obviousness-type double patenting over various claims of co-pending applications 10/865,245 and 10/694,418. Because these applications are, respectably later filed or of even filing date with the present application and have not been allowed, once all other presently maintained rejections are overcome, this application should be passed to allowance and any terminal disclaimers or other appropriate actions should be made in the cited applications.

Claims 12 and 14 are also rejected for obviousness-type double patenting over USPN 7262286. Because the present application is a divisional application of the application which issued as USPN 7262286, this rejection should be withdrawn.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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